

JEROLD EUBANKS
Claimant

THOMPSON BROTHERS
Respondent

FIREMAN'S FUND INSURANCE
Insurance Carrier

KANSAS WORKERS COMPENSATION FUND

ORDER

ISSUES

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The issue raised by respondent is one subject to review on appeal of a preliminary order. K.S.A. 44-534a.

The Appeals Board finds that the evidence does establish that claimant's left knee injury arose out of and in the course of his employment with the respondent because it occurred as a natural and probable consequence of his prior compensable right knee injury.

Claimant sustained injury to his right knee on November 28, 1989. He was subsequently rated and released by the authorized treating physician, William T. Jones, M.D., on April 11, 1991. A Preliminary Hearing was held before Administrative Law Judge George R. Robertson on December 14, 1994. At that hearing, respondent disputed that claimant's present complaints were related to his prior work-related right knee injury which had occurred some five (5) years earlier. Respondent pointed out that claimant had not been seen by the authorized treating physician since April 11, 1991. As a result of that hearing the Administrative Law Judge, on his own motion, ordered an independent medical examination pursuant to K.S.A. 44-516. Said IME was to include an assessment of claimant's current need for medical treatment and was to address the issue of causation.

Claimant was examined by orthopedic surgeon Kenneth A. Jansson, M.D., on March 13, 1995. This IME was followed by a second preliminary hearing before Judge Robertson on July 19, 1995. The Administrative Law Judge's finding that the claimant's present need for treatment for both his right and left knees resulted as a natural and probable consequence of the November 28, 1989 accident is the subject of this appeal. Respondent contends that there is no evidence supporting claimant's allegation that his left knee injury occurred as a result of his right knee giving out. However, the March 13, 1995 IME report of Dr. Jansson relates a consistent history of claimant's right knee injury. Despite the reconstruction surgery performed by Dr. Jones in 1990, the right knee is described as having never really regained stability. Dr. Jansson goes on to state:

“ . . . [the right knee] has been chronically unstable for at least 5 years with some progressive degenerative changes and chronic giving way symptoms. In addition, related to the instability of his right knee causing him to fall, he has now also apparently torn his anterior cruciate ligament in his left knee and is grossly unstable on that side as well.”

Dr. Jansson clearly relates claimant's left knee condition to the instability of claimant's right knee and a resulting fall. This evidence, taken together with claimant's testimony concerning his injury, leads the Appeals Board to conclude, based upon its review of the record as a whole, that the Order by the Administrative Law Judge should be affirmed. The Appeals Board finds that claimant's present need for medical treatment, as to both knees, is the result of personal injuries by accident which arose out of and in the course of claimant's employment with the respondent.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the July 19, 1995 Order of Administrative Law Judge George R. Robertson should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of November, 1995.

BOARD MEMBER PRO TEM

BOARD MEMBER

BOARD MEMBER

c: John M. Ostrowski, Topeka, Kansas
Ronald J. Laskowski, Topeka, Kansas
Thomas Haney, Topeka, Kansas
George R. Robertson, Administrative Law Judge
Philip S. Harness, Director